United Nations CERD/C/SR.2602

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
7 December 2017

Original: English

Committee on the Elimination of Racial Discrimination
Ninety-fourth session

Summary record of the 2602nd meeting*
Held at the Palais Wilson, Geneva, on Thursday, 30 November 2017, at 3 p.m.

Chair: Ms. Crickley

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* No summary record was issued for the 2601st meeting.

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined twentieth to twenty-third periodic reports of Belarus (CERD/C/BLR/20-23; CERD/C/BLR/Q/20-23)

1. *At the invitation of the Chair, the delegation of Belarus took places at the Committee table.*

2. **Mr. Ambrazevich** (Belarus), introducing the combined twentieth to twenty-third periodic reports of Belarus (CERD/C/BLR/20-23), said that his country was fully committed to the goal of eliminating racial discrimination. Belarus had sponsored the resolution recently adopted by the General Assembly to renew the global commitment to combating human trafficking. It also ensured that the topic remained on the agendas of regional organizations such as the Organization for Security and Cooperation in Europe (OSCE). In October 2016 Belarus had ratified the Convention on the Rights of Persons with Disabilities.

3. At the national level, the human rights-based approach to combating human trafficking had been strengthened by the adoption in 2015 of a government decree on the identification of victims, which had facilitated the identification in 2016 of 479 individuals, including children, as potential victims and the confirmation of 184 of them, including 71 children, as victims of human trafficking.

4. In July 2017 the Act on the Granting of Refugee Status and Subsidiary and Temporary Protection to Foreign Nationals and Stateless Persons in Belarus had been amended to strengthen the guarantees of non-discrimination to refugees and asylum seekers, in accordance with the State's obligations under the 1951 Convention relating to the Status of Refugees. In 2014, pursuant to article 1 (4) of the Convention on the Elimination of All Forms of Racial Discrimination, Belarus had applied special measures of assistance to Ukrainian citizens arriving in its territory. Measures had also been taken under special legislation to integrate the Ukrainians or grant them extended periods of residence.

5. Legislation on extremism aimed primarily to prevent the spread of extremist ideas. An expert commission of the Ministry of Information was responsible for identifying materials likely to incite to extremist activity and its findings formed the basis for the prosecution of individuals or associations in proper judicial proceedings. In 83 such cases the courts had ruled to ban certain materials deemed to be extremist in nature.

6. Belarus was grateful to the Committee and the United Nations human rights system in general for their recommendations on the prevention and elimination of discrimination. In 2016 the Government had adopted a plan of action to implement the recommendations issued by the Human Rights Council, in its universal periodic review, and by the treaty bodies. Technical assistance had been requested from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in implementing certain provisions of that plan and Belarus invited other interested partners to support it in its endeavours.

7. Under the plan of action consideration was being given to the establishment of a national human rights institution. Belarus followed the work of such institutions in other countries closely but, while it did not rule out the creation of such a body, for the moment it took the view that, under the Act on Appeals by Citizens and Legal Persons of 18 July 2011, it already had in place a system for dealing with citizens' and legal entities' complaints relating to human rights violations in all areas of life; all such complaints relating to State bodies were required to be investigated.

8. **Ms. Radtshenko** (Belarus) said that Belarus was a multi-faith, multi-ethnic State and did not experience religious or inter-ethnic conflict. It had put in place a legal framework to uphold citizens' rights to freedom of conscience and faith, in accordance with its tradition of religious tolerance. That freedom was underpinned by the Constitution and guaranteed by the Freedom of Conscience and Religious Organizations Act. A detailed programme for the development of interfaith relations, inter-ethnic relations and cooperation with members of ethnic groups living abroad had been drawn up for the period

2016–2020, with the aim of regulating religious affairs, supporting harmonious interfaith and inter-ethnic relations and developing cooperation with State bodies. It also upheld citizens' rights to ethnic and cultural development and ethnic identity, in part through the work of advisory bodies on interfaith and inter-ethnic issues established under the Office of the Commissioner for Religious and Ethnic Affairs.

9. The existence of thousands of religious and faith organizations and establishments meant that it was important to ensure that problems were addressed rapidly and effectively, and the Inter-Religious Advisory Council met every three months to discuss issues of concern. Problems could also be raised directly by telephone hotline. In addition, the Commissioner met local leaders and representatives of religious, ethnic and cultural associations when visiting any given territory.

10. Registered religious organizations were exempt from land and property tax, enjoyed special rent concessions and received funds to carry out restoration work on buildings, monuments and sites. Teachers and student teachers of religious studies also received special support.

11. The numerous nationalities and ethnic groups and associations, including the Belarus Roma diaspora, were represented on the Inter-Ethnic Advisory Council in the Office of the Commissioner for Religious and Ethnic Affairs, which coordinated activities and organized State support for projects.

12. Funding was provided by the State to enable associations to publish printed materials and the Ministry of Information and the Commissioner's Office ran an annual journalism competition for the best coverage of inter-ethnic and interfaith affairs and intercultural dialogue in Belarus.

13. A new regional forum had been created for joint activities with ethnic and cultural associations outside the country and to expand inter-ethnic dialogue with neighbouring States.

14. **Mr. Zhauniak** (Belarus) said that Belarus made great efforts to ensure equality in the various spheres of public and civic life. The principle of equality and protection from discrimination was enshrined in article 22 of the Constitution, which provided that all persons were equal before the law and entitled without discrimination to equal protection of their rights and legitimate interests. The legal provisions prohibiting discrimination and guaranteeing equality were contained in laws governing specific sectors. Labour law, for example, contained a direct ban on discrimination on grounds of gender, race, ethnic origin, language, religious or political convictions, participation or non-participation in trade unions or other voluntary associations, financial situation, official position, age, place of residence or physical or mental disabilities. Similar provisions were in place in the areas of marriage and the family, civil and judicial proceedings and participation in civic associations.

15. There was no general definition of discrimination or racial discrimination in national law. Also, as was the case in a number of other countries, including certain member States of the Council of Europe, there was no comprehensive law on protection from discrimination. Under the Act of 10 January 2000 on the Laws and Regulations of Belarus, the Convention was directly enforceable, like most international treaties ratified by Belarus. Moreover, there was no contradiction between the provisions of domestic law and those of the Convention in respect of the definition of racial discrimination. There was thus no need for national legislation on discrimination on racial grounds.

16. The Government recognized the need to develop its approach to combating racial discrimination and had adopted an interdepartmental plan for the period 2016–2019 to implement recommendations received from the treaty bodies and under the universal periodic review. It would also carry out an analysis of the existing legal framework in order to determine the need for either new provisions on the unacceptability of discrimination or a comprehensive anti-discrimination law. The Government's initial approach had been to draft new laws to address gaps in its fight against discrimination; for example, taking into account the Committee's recommendations of 2013, the Government had adopted a bill amending the Labour Code in January 2014. Article 14 of the Code now contained a non-

exhaustive list of grounds of discrimination which could be used to prosecute employers engaging in discriminatory recruitment practices.

17. In considering the burden of proof in discrimination cases, he recalled that the Code of Civil Procedure was a comprehensive law that governed civil, family and labour proceedings and therefore covered disputes regarding discrimination. Article 12 enshrined the principle of equality of citizens before the law, regardless of their origin, social and financial situation, racial and ethnic identity, gender, education, language, religious views, political convictions, occupation, place of residence, length of residence and other circumstances; therefore, persons believing themselves to have suffered discrimination in the labour sphere were able to seek judicial remedies. Article 339 stipulated that discrimination must be proved and that the burden of proof lay with State bodies, organizations and officials and not with the person claiming to have faced discrimination.

18. Article 60 of the Constitution provided for compensation for acts of discrimination, stipulating that "in order to protect their rights, freedoms, honour and dignity in accordance with law, citizens shall be entitled to claim, through courts, both property damage and financial compensation for moral injury". On that basis, article 152 of the Civil Code granted citizens the right to demand monetary compensation for moral harm from the offender, while article 938 of the same Code established that "harm caused to a citizen or legal person as a result of the illegal actions (omission) of state bodies, bodies of local administration or self-government, or officials of these bodies [...] shall be subject to compensation." Moreover, article 969 stated that in certain instances, compensation for moral harm might be provided irrespective of the fault of the person who caused it. The Government abided by its international commitments and was working to strengthen the country's defences against discrimination, taking into account constitutional provisions and the specific features of the national legal system.

19. **Ms. Li** Yanduan (Country Rapporteur) said that the State party's report had been submitted on time, was aligned with the Committee's reporting guidelines, and responded to most of the recommendations contained in the previous concluding observations (CERD/C/BLR/CO/18-19). Belarus was a multi-religious and multi-ethnic country whose population had, in the twentieth century, overcome the destruction of the Second World War, the adverse impacts of the Chernobyl nuclear disaster and the collapse of the Soviet Union. Despite the challenges it faced, Belarus had achieved several of the Millennium Development Goals before the deadline — including those on eradication of poverty, primary education and gender equality — and rapid per capita income growth during the 2000s had seen the percentage of the population on low incomes fall dramatically.

20. As a founding Member State of the United Nations, Belarus was party to most international human rights instruments; its Constitution recognized the precedence of universally recognized principles of international law and it had an established legal framework for the protection of human rights. Since the submission of its previous periodic report in 2012, the State party had adopted several legislative and administrative measures for the implementation of the Convention, including amendments to the Criminal Code, the entry into force of the Act amending the International Labour Migration Act and the entry into force of the Law on Refugees. A programme for the development of interfaith and inter-ethnic relations and cooperation with members of ethnic groups living abroad during the period 2016–2020 was under way.

21. Commendably, the State party had maintained its anti-trafficking efforts and in November 2013 had acceded to the Council of Europe Convention on Action against Trafficking in Human Beings. It had also entered into agreements with the Russian Federation, Georgia and Serbia to combat criminal activity. The 2014 Act amending the Trafficking in Persons Act of 2012 had expanded the definition of trafficking in persons and laid the foundations for identifying trafficking victims and referring them for rehabilitation. Belarus had signed the Convention on the Rights of Persons with Disabilities in 2015.

22. While welcoming the information contained in the periodic report and the common core document (HRI/CORE/BLR/2015), she requested the State party to provide statistics, disaggregated by ethnicity, on the population's enjoyment of economic, social and cultural

rights such as access to health care, social services, education and housing. The Committee was pleased that the Convention could be applied directly by the Belarusian courts and understood that the lack of a single regulatory act on discrimination was explained by a desire to avoid the duplication of existing legislation. It recognized that, further to the recommendations of human rights treaty bodies, the State party had adopted a national human rights action plan that would include the analysis of its legislation during the period 2017–2019, in order to determine the need for a comprehensive anti-discrimination law.

23. Despite those positive developments, the Committee was concerned that the lack of a definition of racial discrimination in line with article 1 of the Convention might prevent the State party from amending its legislation to criminalize all forms of racial discrimination. In that regard, she wondered whether the State party could give examples of domestic legal provisions that defined and prohibited direct and indirect forms of racial discrimination in accordance with article 1. More information about the direct application of the Convention in judicial or other public bodies would also be appreciated, including cases of discrimination in which the Convention had been invoked by the courts or by victims seeking remedy. Furthermore, she asked the delegation to comment on reports that Belarusian legislation lacked definitions of important terms such as "harassment", "reasonable accommodation" and "victimization" and to describe the outcomes of complaints relating to racial discrimination in access to education, work, medical care and housing. What channels or procedures were available so that victims of discrimination could contact the authorities to claim their rights or to resolve disputes? She asked that the delegation confirm whether the burden of proof in cases of discrimination lay with the defendant, the complainant, or equally with all parties.

24. Recalling the Committee's previous recommendation that the State party should expedite efforts to establish a single fully independent human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), she asked what progress had been achieved in that regard.

25. The Committee had received information that Roma people were particularly vulnerable to racial discrimination in employment and to racial profiling by law enforcement agencies. She requested further details on measures to ensure that Roma citizens were not discriminated against in access to public services and were not subjected to negative stereotyping by the media. Information might also be provided on the effectiveness of any steps taken to prevent, monitor and combat racial profiling and discrimination by law enforcement agencies, and on policy actions to protect the rights of ethnic minorities. For example, did the Government plan to formulate a comprehensive strategy to integrate Roma into Belarusian society?

26. Noting with satisfaction that Belarus had 112 ethnic minority citizens' organizations, she asked whether those organizations were consulted during policymaking processes that affected their rights and interests. To what extent had civil society organizations participated in the preparation of the report and how had their contributions been included? Moreover, considering that public awareness was an important precondition for the implementation of the Convention, she asked whether the State party had taken effective measures to disseminate, within State institutions, the Convention and relevant national legislation on the rights of victims of discrimination. Had it implemented any educational programmes in order to combat prejudice and promote tolerance and understanding among government workers?

27. Although the State party had intensified its efforts to combat trafficking in persons, including by providing training and expanding the scope of its anti-trafficking legislation, some reports indicated that Belarus remained a source, transit and destination country for the trafficking of persons for sexual exploitation and forced labour. In that context, she asked the delegation whether it was true that there had been no recent trafficking convictions and only one investigation into trafficking in persons in each of the previous three years.

28. Observing that the State party had granted refugee status to 926 foreign nationals as at 1 January 2016, she asked over what time period that figure had accumulated.

Considering that article 17 of the Act on the Legal Status of Foreign Nationals and Stateless Persons in Belarus provided foreigners with protection against refoulement, she wondered whether stateless persons were protected against expulsion. Lastly, she asked for information on the number of asylum applications and appeals filed, denied and granted, the availability of education, legal aid and health care to migrants and asylum seekers, and the capacity of the three temporary accommodation centres for refugees and persons applying for refugee status.

The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.

29. **Mr. Kut** said that the Committee welcomed the timely submission of the State party's interim report on its follow-up to the recommendations contained in paragraphs 10, 15 and 17 of the Committee's previous concluding observations (CERD/C/BLR/CO/18-19). Based on the information contained in the interim report, the Committee had urged the State party to monitor closely the application of the Counteracting Extremism Act to ensure that it did not violate individual human rights and fundamental freedoms, and had requested detailed information on the application of the Act by domestic courts. Although that issue appeared to have been taken up under paragraphs 146 to 154 of the State party's periodic report (CERD/C/BLR/20-23), the paragraphs in question made reference to the Counter-Terrorism Act as opposed to the Counteracting Extremism Act. The delegation should clarify whether the two Acts were one and the same and specify the nature of the content that was assessed for signs of extremism by expert commissions.

30. It was regrettable that the State party had made little or no progress towards establishing a national human rights institution as recommended by the Committee in 2013. He asked whether the State party had any intention of establishing such an institution in the near future.

31. The Committee appreciated the extensive information provided on the legislative and policy measures taken by the State party to combat human trafficking. It was his understanding that the Trafficking in Persons Act had been amended in 2014 and 2015. He asked whether that was indeed the case and, if so, what the scope of those amendments had been and what practical results they had yielded.

32. **Mr. Marugán** said that, although the State party had made progress towards adopting comprehensive legislation specifically prohibiting racial discrimination and criminalizing racist organizations, racist hate speech and incitement to racial violence, and towards making racist hate speech an aggravating circumstance in the determination of sanctions for violent crimes, he still harboured doubts as to whether the legislation currently in place was fully compliant with article 4 of the Convention. He asked whether the State party had specific legislation outlawing racist organizations and whether there was an established procedure for disbanding them. It would also be useful to know whether the legislation in place to combat racist hate speech met all the requirements set out in article 4 of the Convention and in the Committee's general recommendation No. 35 on combating racist hate speech (CERD/C/GC/35).

33. The statistical data provided in the State party's report, according to which there had been no recent convictions under article 139 of the Criminal Code, only one under article 130 of the Criminal Code and that there had been only isolated incidents in which unlawful acts had been racially motivated, appeared not to tally with that contained in a report published by the Organization for Security and Cooperation in Europe, which pointed to a rise in the number of hate crimes recorded and in the number of sentences imposed for such crimes. The delegation should explain that discrepancy and the reasons for the rise in hate crime and specify the articles of the Criminal Code concerned. It would also be useful to hear more about the criteria that had to be met in order for racial, ethnic or religious hatred to constitute an aggravating circumstance and to know the exact number of cases in which criminal acts had been found to be racially motivated. He asked whether police officers, prosecutors and judges received training on identifying crimes that were racially motivated, on determining whether aggravating circumstances applied and on giving effect to the Committee's general recommendation No. 35 on combating racist hate speech (CERD/C/GC/35).

34. The delegation should also comment on reports that article 130 of the Criminal Code was often invoked for political reasons and indicate whether ex officio proceedings could be initiated against perpetrators of racially motivated hate crimes and, if so, specify the number of cases in which such proceedings had been initiated. He asked how the State party assisted NGOs working with victims of racially motivated hate crimes and how it went about addressing the problem of underreporting of such crimes. Recalling that the Convention made no mention of extremism, he said that it would be helpful to receive additional information on the extremist acts mentioned by the head of delegation and on the judicial decisions handed down in that connection, particularly the articles of the Criminal Code under which those acts had been prosecuted. He asked whether the State party believed those acts to amount to a violation of article 4 of the Convention.

35. Lastly, he wished to know whether the Media Act specifically prohibited the dissemination of information intended to incite racial hatred. It appeared that, despite the State party having prohibited the use in the media of negative stereotypes of the Roma community or any other ethnic or social group or individual, racist hate speech remained widespread. He asked whether there was a media regulatory body in Belarus, what penalties that offence carried, how many cases had been reported and whether political leaders had publicly condemned the use of racist hate speech.

36. **Mr. Yeung Sik Yuen** said that an independent judiciary was essential for protecting and guaranteeing the rights of minorities and the downtrodden. The Special Rapporteur on the independence of judges and lawyers had found that, although the Constitution attributed judicial power to the courts, the President and members of the executive branch often interfered in the appointment and dismissal of judges and in the apportionment of the judicial budget. It was his understanding that, in Belarus, judges were appointed by the President for a five-year term, which could be renewed at his or her discretion. The existing appointment system and the insecurity of tenure accompanying it undermined the independence of the judiciary, which was a serious cause for concern.

37. The Constitutional Court was composed of 12 judges, 6 of whom were appointed by the President and 6 by the Council of the Republic. He found it strange that, despite the primary purpose of the Constitutional Court being to exercise judicial oversight of the constitutionality of national laws and regulations, citizens could not bring a case before it directly, that right being reserved for a small number of State entities. Therefore, persons whose constitutional rights had been breached had no access to the Constitutional Court. The delegation might comment on whether, in its view, that state of affairs constituted an impediment to access to justice. The Committee had also been informed that lawyers who accepted difficult or controversial cases often encountered problems and could even lose their licence to practise law. He asked whether that was indeed the case and, if so, how the State party planned to remedy that situation.

38. The so-called "social parasite" law, which required adults who had worked for fewer than 183 days in a given year to pay a fine amounting to some $250 as a means of recovering lost tax revenue, discriminated against the Roma insofar as members of that community who had no choice but to travel to the Russian Federation to work were automatically liable. Bearing in mind that the average monthly salary in Belarus was some $380, $250 was a considerable amount of money. It was his understanding that there had been mass demonstrations against the law and that some 1,500 people had been arrested, fined or imprisoned in that connection. Noting that the enforcement of the law had been suspended, he asked whether the State party planned to repeal it in its entirety or whether the suspension was only a temporary measure.

39. **Mr. Avtonomov** said that the State party's timely submission of its periodic report showed that it was committed to fulfilling its obligations under the Convention.

40. In the light of concerns that, in some cases, victims of racial discrimination in the field of employment were unable to provide proof of discrimination as required by the courts, he recommended regulating the burden of proof in civil proceedings involving racial discrimination in accordance with paragraph 24 of the Committee's general recommendation No. 30 on discrimination against non-citizens.

41. It was important to ensure that all racially motivated offences were identified as such and punished accordingly. Youth should not be considered a mitigating factor: neo-Nazi youth groups that had committed hate crimes should not be let off lightly in the hope that their views would change over time.

42. He noted that the State party had not made a declaration under article 14 of the Convention, recognizing the competence of the Committee to receive and consider individual complaints, as recommended in paragraph 23 of the Committee's previous concluding observations (CERD/C/BLR/CO/18-19).

43. The proposed amendment to article 8 of the Convention provided for the financing of the Committee from the regular budget of the United Nations.

44. **Ms. Hohoueto**, noting with regret that the State party's periodic report had been drawn up without input from civil society, said that steps should be taken to ensure that the principles enshrined in the Convention, including the definition of racial discrimination contained in article 1, were incorporated into the Constitution and the Criminal Code.

45. She would like to know whether citizens were aware that they could invoke the provisions of the Convention before a domestic court and whether judges, in turn, were aware that they could directly apply those provisions in cases brought before them. She also wondered what criteria were used to assess eligibility for legal aid and whether victims of racial discrimination were considered eligible.

46. She would welcome the delegation's comments on the concerns that had been raised as to the impartiality and independence of the judiciary. Lastly, it would be interesting to hear what type of measures had been taken under the legal literacy plan for 2001–2015; whether an evaluation of that plan had been carried out; and if so, what the findings of that evaluation had been.

47. **Mr. Murillo Martínez**, commending the efforts made to combat the dissemination of racist material online, asked whether the State party had considered using the Internet as a tool to promote tolerance and non-discrimination.

48. He would appreciate more information on the provision of education in minority languages and an explanation as to how the recent amendments to counter-terrorism legislation would help to combat terrorism and racial discrimination.

49. Lastly, he would like to know more about the representation of minority groups within decision-making bodies and as a proportion of the prison population.

50. **Mr. Bossuyt** said that he wished to know how the State party's counter-terrorism legislation was applied, for he was concerned that it was too vague and could be misused. Noting that the denigration of official languages was considered an offence, he asked which languages were official languages and whether anyone had been charged with that offence.

51. He would welcome information on steps taken to cater for individuals wishing to communicate in a non-official language in the administrative and judicial spheres; the content of the Act of 5 January 2016 concerning the employment of foreign workers; and the reasons for the divergence of public opinion regarding the establishment of a national human rights institution.

52. **Mr. Khalaf** said that there was a contradiction between paragraphs 57 and 58 of the common core document (HRI/CORE/BLR/2015), which implied that the legal system was dualist in nature, and paragraph 138 of the periodic report (CERD/C/BLR/20-23), which suggested that it was monist. It would be helpful if the delegation could shed light on the matter and explain whether it was possible to invoke the provisions of the Convention in a domestic court.

53. With reference to the separation of powers described in paragraph 7 of the common core document, he would welcome more information on the role of the National Assembly in relation to the three branches of government.

54. **Ms. Hohoueto** invited the delegation to confirm and clarify the assertion, in paragraph 69 of the common core document, that the Supreme Court and the Supreme Economic Court had been merged into a single supreme judicial body.

The meeting rose at 5.30 p.m.